

STATUTES

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A.R.S. 13-3010. Ex parte order for interception; definition

A. On application of a county attorney, the attorney general or a prosecuting attorney whom a county attorney or the attorney general designates in writing, any justice of the supreme court, judge of the court of appeals or superior court judge may issue an ex parte order for the interception of wire, electronic or oral communications if there is probable cause to believe both:

1. A crime has been, is being or is about to be committed.
2. Evidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.

B. An application under subsection A shall be made in writing and upon the oath or affirmation of the applicant. It shall include:

1. The name and title of the applicant.
2. A full and complete statement of the facts and circumstances relied upon by the applicant, including the supporting oath or affirmation of the investigating peace officer of this state or any political subdivision of this state to justify the officer's belief that an order should be issued. The statement shall include:

- (a) Details as to the particular crime that has been, is being or is about to be committed.

- (b) The identity of the person, if known, committing the offense and whose communications are to be intercepted.
- (c) A particular description of the type of communications sought to be intercepted.
- (d) A particular description of the nature, identification and location of the communication facility from which or the place where the communication is to be intercepted. If the identification or specific description of the communication facility from which or the place where the communication is to be intercepted is not practical, the affidavit in support of the application must state why:
 - (i) Specification is impractical.
 - (ii) Interception from any facility or at any place where the communication may occur is necessary.

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

4. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that authorization to intercept should not automatically terminate when the described type of communication has been first obtained, the statement shall include a particular description of facts establishing probable cause to believe that additional communications of the same type will occur after the communication has been first obtained.

5. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each application.

6. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

C. Upon proper application, a judge may enter an ex parte order authorizing interception, as requested or with any appropriate modifications, if the judge determines on the basis of the facts submitted by the applicant that:

- 1. There is probable cause to believe that a person is committing, has committed or is about to commit a particular crime.
- 2. There is probable cause to believe that particular communications concerning that offense will be obtained through the interception.
- 3. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.
- 4. There is probable cause to believe any of the following:
 - (a) Wire or electronic communications concerning the offense are being made or are about to be made by the person over the communication facilities for which interception authority is granted.
 - (b) Oral communications concerning the offense are being made or are about to be made by the person in the location for which interception authority is granted.

(c) Communications concerning the offense are being made or are about to be made by the person in different and changing locations, or from different and changing facilities.

D. Each order authorizing the interception of any wire, electronic or oral communication shall specify all of the following:

1. The identity of the person, if known, whose communications are to be intercepted.
2. The nature and location of the communication facilities as to which or the place where authority to intercept is granted. If authority is granted to intercept communications of a person wherever that person is located or from whatever communication facility is used, the order shall so state and shall include any limitations imposed by the authorizing judge as to location, time or manner of the interception. The order shall state that the interception shall not begin until the facilities from which or the place where the communication is to be intercepted is ascertained by the person implementing the interception order.
3. A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.
4. The identity of the agency authorized to intercept the communications and of the person authorizing the application.
5. The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.
6. That the authorization for interception be executed as soon as practicable, that it be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and that it terminate upon attainment of the authorized objective or on the date specified, whichever comes first.
7. That entry may be made to service, install or remove interception devices or equipment if entry is necessary to effect the interception.

E. An order that is entered under this section may not authorize the interception of any wire or oral communication for any period that is longer than is necessary to achieve the objective of the authorization and that exceeds thirty days. This thirty day period begins on the earlier of the day on which the interception actually begins under the order or ten days after the order is signed. The court may grant extensions of any order if an application for an extension is made pursuant to subsection A and the court makes the findings required by subsection C. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and shall not exceed thirty days.

F. Any ex parte order for interception, together with the papers on which the application was based, shall be delivered to and retained by the applicant during the duration of the interception as authority for the interception authorized in the order. The justice or judge issuing the order shall retain a true copy of the order at all times.

G. Within ten days after the termination of the authorized interception, applications made and orders granted under this section shall be returned to and sealed by the judge. Custody of the applications and orders shall be wherever the judge directs.

The applications and orders shall be disclosed only on a showing of good cause before a judge of competent jurisdiction or as otherwise provided.

H. If possible, the contents of any communication that is intercepted by any means authorized by this section shall be recorded on any tape, electronic, wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such a way as will protect the recording from editing or alterations. Within ten days after the termination of the authorized interception, the recordings shall be made available to the judge who issued the order and shall be sealed under the judge's directions. Custody of the recordings shall be maintained pursuant to court order. The recordings shall be kept for ten years and shall not be destroyed except on an order of the issuing judge or another judge of competent jurisdiction.

I. Within ninety days after an application under subsection A is denied, or the period of an order or any extension expires, the issuing or denying judge shall serve the persons named in the order or application and any other parties to the intercepted communications as the judge may determine the interests of justice require with an inventory, including notice of all of the following:

1. The fact of the entry of the order or the application.
2. The date of the entry and the period of authorized interception, or the denial of the application.
3. The fact that during the period of authorized interception wire, electronic or oral communications were or were not intercepted. On motion, the judge may make available to the person or the person's attorney for inspection such portions of the intercepted communications, applications and order as the judge determines to be in the interest of justice. On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed.

J. On request of the applicant, any order authorizing interception shall direct that the communication service provider, landlords, custodians or other persons furnish the applicant with all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that these persons are according the person whose communications are to be intercepted.

K. The order may require written reports to be made to the issuing judge at specified intervals showing the progress made toward achieving the authorized objective and the need for continued interception.

L. Any order authorizing the interception of wire communications pursuant to this chapter is also deemed to authorize the interception of any electronic communication that may be made over the same equipment or by the same facility.

M. If the intercepted communication is in a code or foreign language and an expert in that code or foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception.

N. An interception under this chapter may be conducted in whole or in part by government personnel or by an individual operating under a contract with the government or acting under the supervision of a law enforcement officer who is authorized to conduct the interception.

O. The applicant is responsible for providing to the administrative office of the United States courts all reports on applications for or interceptions of wire, electronic or oral communications that are required by federal statutes.

P. For the purposes of this section, "crime" means murder, gaming, kidnapping, robbery, bribery, extortion, theft, an act in violation of chapter 23 of this title, dealing in narcotic drugs, marijuana or dangerous drugs, sexual exploitation of children in violation of chapter 35.1 of this title or any felony that is dangerous to life, limb or property. Crime includes conspiracy to commit any of the offenses listed in this subsection.

A.R.S. 13-3017. Ex parte order for pen register or trap and trace device

A. Any prosecuting attorney or investigating peace officer of this state or its political subdivisions may apply to any justice of the supreme court, judge of the court of appeals, judge of the superior court or magistrate for an ex parte order authorizing the installation and use of a pen register or a trap and trace device. The application shall be made in writing and under oath and shall state:

1. The name and title of the applicant.
2. The attributes of the communication, including the number or other identifier, the identity, if known, of the subscriber and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, if the order authorizes the installation of a trap and trace device, the geographic limits of the order.
3. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation.
4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

B. On proper application pursuant to subsection A, the judge shall issue an ex parte order authorizing the installation and use of a pen register or trap and trace device or process if the judge finds that the applicant has certified that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation. On service, the order applies to any person or entity that provides wire or electronic communication service in this state or that does business in this state and whose assistance may facilitate the execution of the order. If an order is served on any person or entity that is not specifically named in the order and on request of the person or entity, the prosecuting attorney or peace officer who serves the order shall provide written or electronic certification that the order applies to the person or entity being served. An order that is issued under this subsection shall specify all of the following:

1. The identity, if known, of the subscriber of the communication service or telephone line to which the pen register or trap and trace device is to be attached or applied.
2. The attributes of the communication to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, if the order authorizes the installation of a trap and trace device, the geographic limits of the order.
3. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

4. That, on the request of the applicant, the communication service provider shall furnish information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device and to identify subscribers of any communication facility or telephone number obtained by operation of such device.

C. An order that is issued under this section authorizes the installation and use of a pen register or trap and trace device for a period of not to exceed sixty days. Extensions of the order may be granted, but only on an application and judicial finding pursuant to subsections A and B. The period of each extension granted shall not exceed sixty days.

A.R.S. 13-3018. Communication service records; subpoenas; application; certification; definition

A. This section applies to all communication service providers that do business in this state or that furnish communication services to persons within this state.

B. The prosecutor may issue a subpoena duces tecum to a communication service provider in order to obtain communication service records in connection with a criminal investigation or prosecution for any offense in which a prosecutor suspects that a computer or network was used. This subsection does not prevent the prosecutor from obtaining a grand jury subpoena duces tecum.

C. The prosecutor who issues a subpoena pursuant to this section shall certify in the body of the subpoena that the information likely to be obtained is relevant to an ongoing criminal investigation.

D. An authorized representative of a communication service provider may certify communication service records that are obtained by subpoena if all of the following apply:

1. The records are the regular communication service records that are used and kept by the communication service provider.
2. The records are made at or near the time the underlying communications occur in the ordinary course of business.
3. The authorized representative certifies that the record produced in response to the subpoena is an accurate copy of the communication service provider records.

E. Certified communication service records that are obtained by subpoena may be introduced in evidence at a hearing or trial and constitute prima facie evidence of the facts contained in the records.

F. If a certification of communication service provider records is acknowledged by any notary or other officer who is authorized by law to take acknowledgments, the certification shall be received in evidence without further proof of its authenticity.

G. For the purposes of this section, "communication service records" includes subscriber information, including name, billing or installation address, length of service, payment method, telephone number, electronic account identification and associated screen names, toll bills or access logs, records of the path of an electronic communication between the point of origin and the point of delivery and the nature of the communication service provided, such as caller identification, automatic number identification, voice mail, electronic mail, paging or other service

features. Communication service records do not include the content of any stored oral, wire or electronic communication.

13-3011. Disclosing confidential information relating to ex parte order; exceptions; classification

A. Except in any trial, hearing or other judicial proceeding, a person shall not knowingly disclose to another person any information concerning either:

1. The application for or the granting or denial of orders for the interception or installation of a pen register or trap and trace device or a request for the preservation of records or evidence pursuant to section 13-3016 or a subpoena issued pursuant to section 13-3018.
2. The identity of the person or persons whose communications are the subject of an ex parte order, subpoena or records preservation request granted pursuant to sections 13-3010, 13-3015, 13-3016, 13-3017 and 13-3018.

B. Subsection A of this section does not apply to the disclosure of information to the communication service provider whose facilities are involved or to an employee or other authorized agent of the county attorney, attorney general or law enforcement agency that applies for an order permitting interception or installation of a pen register or trap and trace device or who requests the preservation of records or evidence pursuant to section 13-3016 or a subpoena issued pursuant to section 13-3018.

C. Notwithstanding subsection A of this section, a peace officer or prosecuting attorney who obtains knowledge of the contents of a wire, electronic or oral communication as authorized by sections 13-3010, 13-3015, 13-3016, 13-3017 and 13-3018 or evidence derived from that knowledge may:

1. Disclose the contents of the communication to a peace officer or prosecuting attorney to the extent the disclosure is appropriate to the proper performance of the official duties of the peace officer or prosecuting attorney making or receiving the disclosure.
2. Use the contents of the communication to the extent that the use is appropriate to the proper performance of the official duties of the peace officer or prosecuting attorney.

D. A person who violates this section is guilty of a class 1 misdemeanor.